



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-1036

Certain Magnetic Tape Cartridges and Components Thereof

Commission Determination to Review in Part the Final Initial Determination; and,

On Review, to Find No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the Chief Administrative Law Judge's ("ALJ") final initial determination ("ID"), issued on January 25, 2018, finding no violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), in the above-captioned investigation. On review, the Commission has determined to find no violation of section 337. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket

(EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-captioned investigation on January 24, 2017, based on a complaint filed by Sony Corporation of Tokyo, Japan; Sony Storage Media and Devices Corporation of Miyagi, Japan; Sony DADC US Inc. of Terre Haute, Indiana; and Sony Latin America Inc. of Miami, Florida (collectively, "Sony"). *See* 82 FR 8209-10 (Jan. 24, 2017). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic tape cartridges and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,345,779 ("the '779 patent"); U.S. Patent No. 7,115,331 ("the '331 patent"); U.S. Patent No. 6,896,959 ("the '959 patent"); and U.S. Patent No. 7,016,137 ("the '137 patent"). *Id.* The notice of investigation named Fujifilm Holdings Corporation of Tokyo, Japan; Fujifilm Corporation of Tokyo, Japan; Fujifilm Holdings America Corporation of Valhalla, New York; and Fujifilm Recording Media U.S.A., Inc. of Bedford, Massachusetts (collectively, "Fujifilm") as respondents in this investigation. *Id.* The Office of Unfair Import Investigations is also a party to this investigation. *Id.*

All asserted claims of the '959 patent and the '137 patent and one asserted claim of the '331 patent have been terminated from the investigation. *See* Order Nos. 20 and 21; Comm'n Notices (Sep. 25, 2017). The evidentiary hearing was held on September 25-28, 2017.

On January 25, 2018, the Chief ALJ issued his final ID and his recommended determination ("RD") on remedy and bonding in this investigation. The ID finds no violation of

section 337 by Fujifilm in connection with claims 1-6 of the '779 patent and claims 1-3, 9-11, 13-14, and 16-17 of the '331 patent (collectively, “the Asserted Patents”). Specifically, the ID finds that Fujifilm does not infringe the asserted claims of the Asserted Patents. The ID also finds that the asserted claims of the '331 patent have not been proven invalid but that the asserted claims of the '779 patent are anticipated and/or obvious. The ID further finds that the technical prong of the domestic industry requirement has not been satisfied for the '779 patent but has been satisfied for the '331 patent. And, finally, the ID finds the economic prong of the domestic industry requirement has not been satisfied for the Asserted Patents.

On February 7, 2018, Sony and the Commission’s Investigative Attorney each filed a timely petition for review of the ID and Fujifilm filed a contingent petition for review of the ID. On February 15, 2018, the parties filed timely responses to the petitions for review. No public interest comments were filed by the public in this investigation.

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. First, the Commission has determined to correct three typographical errors on page 51 of the ID. In line 16 of the ID, “securing the leader pin spring in the tape cartridge” is replaced with “securing the leader pin in the tape cartridge.” In line 18 of the ID, “claim” is replaced with “claim 1” and “leader pin sits loosely” is replaced with “leader pin spring sits loosely.”

Second, with respect to the '779 patent, the Commission has determined to review the ID’s finding that the 15th embodiment in U.S. Patent No. 6,236,539 (“Morita”) does not anticipate the asserted claims, and the ID’s finding that claims 5 and 6 are rendered obvious by a combination of Morita’s 6th and 15th embodiments.

Third, with respect to the '331 patent, the Commission has determined to review the ID's finding that the Fujifilm's accused products do not infringe and that IBM's domestic industry products do not practice the asserted claims of the '331 patent; the ID's construction of the claim term "metallic magnetic particulate pigment;" the ID's finding that JP 2002-074641 ("Mori") does not anticipate the asserted claims; and the ID's finding that JP 2003-123226 ("Naoe") does not anticipate the asserted claims.

Finally, the Commission has determined to review the ID's finding that the economic prong of the domestic industry requirement has not been satisfied for the Asserted Patents.

On review, the Commission has determined to construe the "magnetic metallic particulate pigment" limitation in claims 1 and 16 of the '331 patent to mean the "magnetic metal particle pigments have a composition including, but not limited to, metallic iron and/or alloys of iron with cobalt and/or nickel, and magnetic or non-magnetic oxides of iron, other elements, or mixtures thereof." JX-0004 at 4:36-39.

The Commission has also determined to affirm the ID's finding that Fujifilm's accused products do not infringe and that IBM's domestic industry products do not practice the asserted claims of the '331 patent. The Commission adopts the ID's analysis on pages 99-120 and 125-128, and further relies on Dr. Wang's coercivity measurements for Fujifilm's accused products and IBM's domestic industry products as a basis for finding Sony's expert's conclusions unreliable. *See* RX-0010C (Wang RWS) Q/A 282, 296, 303. Dr. Wang's coercivity measurements demonstrate that these products do not meet the "coercivity of at least about [2300/2500] Oe" limitation as required by claims 1 and 16 of the '331 patent.

The Commission has determined to take no position on the other issues under review.

The Commission has further determined not to review the remainder of the ID, including the ID's findings that Fujifilm does not infringe the asserted claims of the '779 patent; that claims 1-4 of the '779 patent are anticipated by Morita's 6th embodiment; and that the technical prong of the domestic industry requirement has not been satisfied for the '779 patent. Accordingly, the Commission has determined to affirm with modifications the ID's finding of no violation of section 337. The investigation is terminated in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Lisa Barton
Secretary to the Commission

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